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No. 80-1843

In the Supreme Court of the United States

OCTOBER TERM, 1980

ROBERT C. AND PATRICIA R. YOUNG,
JANE JONES, AND FELLOWSHIP OF CHRIST CHURCH,
PETITIONERS,

VS.

ROBERT AND JUDITH BOGRETTE, WILLIAM AND TRACIE CUPPY,
OLAF AND EMERIN HELLAND, JOHN T. AND BERNICE HUGHES,
KENNETH AND ELIZABETH STAUGAARD, CHARLES AND
CAROL COHOON, AND LEO W. BURTON,
RESPONDENTS.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MICHIGAN

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QUESTIONS PRESENTED

1. Did the trial court exceed its authority or violate Petitioner's constitutional rights when it fashioned such equitable relief as it deemed warranted by the proven circumstances, including dissolution of an ecclesiastical corporation and appointment of a receiver?
2. Did the trial court err when it found in substance that a joint venture existed and that the Statute of Frauds was inapplicable?

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OPINIONS BELOW

The unreported opinion of the Michigan Court of Appeals (Civ. No. 78-5213), the unreported judgment of the trial court (Civ. No. 77-152370-AZ) and the Michigan Supreme Court's denial of Petitioners' application for leave to appeal, entered December 3, 1980, are contained in the Appendix to the Petition for A Writ of Certiorari at App. 1d, 1c and 1f, respectively.

The unreported opinion of the trial court (Civ. No. 77-152370-AZ) and the Michigan Supreme Court's denial of Petitioners' Motion for Reconsideration of its December 3, 1980 order appear at App. 1a and App. 1b, respectively, in the Appendix attached hereto.

JURISDICTION

The judgment of the Circuit Court for the County of Oakland was entered on November 22, 1978. On January 28, 1980, the Michigan Court of Appeals rendered an opinion affirming the Circuit Court's judgment. The Court of Appeals denied Petitioners' motion for rehearing on March 20, 1980. The Michigan Supreme Court denied Petitioners' application for leave to appeal from the decision of the Michigan Court of Appeals on December 3, 1980. On May 27, 1981, the Michigan Supreme Court denied Petitioners' motion for reconsideration of its order entered December 3, 1980.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment I:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ."

United States Constitution, Amendment XIV, §1:

> "[N]or shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Michigan Statutes involved in this case are set forth at App 1h and 1i of the Appendix to the Petition For A Writ of Certiorari To The Court of Appeals of the State of Michigan.

STATEMENT OF THE CASE

This action was commenced by Respondents, as homeowners in a residential subdivision, to prevent Petitioners from absconding to the Province of British Columbia, Canada with proceeds from the sales of real property in the subdivision, which had been dedicated to the use of the homeowners. The subdivision had been developed by a group of individual families, under an agreement in which an ecclesiastical corporation, then controlled by them, was used as a corporate developer and repository of title and funds.

In September of 1958, a Michigan ecclesiastical corporation had been formed by Respondents KENNETH STAUGAARD and JOHN T. HUGHES and one Kathro W. Martin, under the name "Fellowship of Christ." In January, 1960, the congregation of the FELLOWSHIP OF CHRIST, consisting of approximately ten families, decided to search for a meeting place more suitable than the small building they were using at the time. It was discovered that approximately 20 acres of farm land, which included a house and a barn, in Rochester, Michigan, were listed for sale.

Petitioner ROBERT C. YOUNG, the pastor of the FELLOWSHIP OF CHRIST, suggested that the property be acquired and developed as a residential subdivision. The families of Respondents' STAUGAARD, HUGHES and COHOON and Petitioner YOUNG, met several times and agreed that between them they could raise the required $6,000.00 down payment. These individuals would purchase lots in the subdivision and remaining lots would be sold to other interested parties. The proceeds from the sales of these lots would be used to meet the land contract payments and other expenses of purchasing and developing the entire parcel, which would include the construction of a playground, park, swimming pool, tennis court and other amenities.

It was further agreed that the FELLOWSHIP OF CHRIST would act as the developer and, if lot sales did not proceed quickly enough, it would advance money to the venture and would be repaid. At these meetings, the YOUNG, STAUGAARD and COHOON families committed themselves to contribute $2,000.00 each for the down payment. These meetings were held privately and were not conducted as official meetings of the ecclesiastical corporation's Advisory Board or Board of Elders. Thus, the individuals, as a group apart from the church, agreed to undertake the construction of a residential subdivision on the 20-acre farm, providing down payment funds and other funds for the project.

The church was not to act for its own benefit or profit in any way from the venture. The role of the FELLOWSHIP OF CHRIST was to act as the developer, or "sponsor". According to Petitioner ROBERT C. YOUNG, himself, the corporation was: "to conduct the business for the development, to handle finances, to take title of the unsold properties and to provide a decision for who would buy the land and who would not, against a set of rules that we collectively, together, established."[1]

Subsequently, the ecclesiastical corporation's Advisory Board held a meeting to consider the purchase, and the minutes of that meeting refer in general to the purchase, and particularly to the financial commitments of the individual families given at their earlier meetings. Shortly thereafter, an offer to purchase the property, executed by Petitioner ROBERT C. YOUNG on behalf of the FELLOWSHIP OF CHRIST, was delivered to the owners, who accepted it on March 25, 1960. A rider, separately executed by Respondents STAUGAARD and HUGHES and Petitioner YOUNG, was attached to the offer to purchase. The rider contained and

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[1] *See* trial transcript. (Book 2, pp. 19-20).

referred to the plan for subdivision of the entire 20 acres by the four families to be called Heartpeace Hills, drafted prior to making the offer.

The property was surveyed for the purpose of creating a subdivision plan that would include a meeting place for a church and common property for the enjoyment of the residents.

Petitioner ROBERT C. YOUNG prepared a first draft of a detailed plan and agreement for the development, entitled "Concept for Heartpeace Hills." This draft was submitted to the Avon Township Zoning Board to support a request for a change of zoning, after the Concept had been approved by Respondents, STAUGAARD, HUGHES and COHOON as an accurate reflection of the understandings reached in their previous meetings.

After several drafts the final version of the "Concept for Heartpeace Hills" was delivered first to families who had expressed an intention to purchase lots and move into the subdivision, then to the rest of the members of the FELLOWSHIP OF CHRIST. The Concept in its final form is a coherent and businesslike expression of the development plan, sprinkled with biblical references.[2] A Restriction Agreement was also prepared and this document incorporates the Concept document referred to above, by reference.[3]

Under the agreement of the first four families, reflected in the Concept, a person could make a deposit and thereby signify his intention to become a resident. When he actually

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[2] These references were scrupulously ignored by the trial court. See *Jones v. Wolf*, 443 U.S. 595 (1979).

[3] See Restriction Agreement at Appendix 18k of the Petition for Certiorari, particularly Paragraph 22 set forth at App. 25k.

acquired title, the party could build on the lot, enjoy the use of the common areas and ultimately sell his property, at which point he would cease to be a member of the venture and would have no further rights against other parties.

Respondents STAUGAARD and JOHN HUGHES, and Petitioner ROBERT C. YOUNG, constituted the entire membership of the Board of Elders and of the Advisory Board. According to the By-Laws, these were the governing and controlling bodies of the corporation.

Eventually, after years of work and labor to build up the subdivision, deeds to lots were received by the STAUGAARDS, HUGHES, YOUNGS and HELLANDS. Each deed includes an acknowledgment of the grantee that the parcel "forms a part of an approximately 20-acre tract . . . to be hereafter platted and subdivided" and each agrees to be bound by the same. The Restriction Agreement was also executed by the same parties in September, 1974, and was later recorded. The Restriction Agreement was intended and was referred to as applying to the entire tract of approximately 20 acres, including the common areas. Deeds subsequently received by other Respondents were given expressly subject to "restrictions of record."

When each grantee paid for his lot, he intended to receive not only the lot but the right to use the unplatted common property as well, in accordance with the agreements contained in the Concept and the Restriction Agreement. The FELLOWSHIP OF CHRIST held legal title to the unsold properties and the common areas. Eventually title to the common areas was to be conveyed to a Homeowners' Association, to be formed by the residents.

The construction of the subdivision out of a farm was accomplished to a great extent by the personal labor of the Respondents. Most of the work was performed in the early years of

1961-1969, but some was also performed as late as 1975. The work concentrated mainly in the common areas: roads, creek relocation, back filling, utility trenches, gardens, etc.

The Concept[4] called for the construction of two "micro-neighborhoods" and the construction and sharing of facilities to be built upon adjoining open land, including a tennis court, swimming pool, playground, a small stream, park and the meeting place for the church. The two neighborhoods were constructed and separately platted, and the park was installed but the other facilities are not yet completed.

Separate accounts were maintained to monitor the financial relationship between FELLOWSHIP OF CHRIST, as developer, and the individual residents. All deposits and payments toward the purchase of land were separately accounted for and were distinct from any charitable contributions that may have been made to the ecclesiastical corporation.

In late 1968 and early 1969, an abrupt change occurred. Petitioner PATRICIA R. YOUNG announced that she was the "mother of the church" and was to be in full control of the ecclesiastical corporation to the exclusion of the Board of Elders and Advisory Board previously vested with such control. She declared in a meeting of the congregation on November 12, 1968: "I am the mother of this church and shall be until the governments of this dear body are mature enough to manage on their own." Subsequently, Respondent ROBERT C. YOUNG effectively declared that anyone not willing to go along with the full program, including his wife's new role, would be unwelcome. Because of this change the Respondents withdrew as members of the FELLOWSHIP OF CHRIST.

In July, 1975, the FELLOWSHIP OF CHRIST decided to sell the real property held in its name, and allow the Young

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[4] See App. 12k of the Appendix to the Petition for Certiorari.

family and JANE JONES to take the proceeds of said sale and relocate to the Peace Valley Ranch, a commune in British Columbia, Canada.

The Respondents thereupon instituted this action for specific performance of a joint venture agreement, imposition of a constructive trust, accounting, injunctive and declaratory relief and such other remedies as the trial court deemed proper under the proven circumstances. In their Answer, Petitioners asserted the affirmative defense that: "even if an agreement ever existed as Plaintiffs allege (although this is denied by Defendants), the same must be rendered a nullity for failure of consideration, since the Plaintiffs (1) many years ago left the church and (2) have not contributed to the development of the Subdivision, payment of taxes and the like."

Confronted with the multiplicity of parties and interests to be considered, and the constructive fraud that would be perpetrated by the Petitioners if not prevented from proceeding as they intended, the trial court entered its Opinion and judgment as a court of equity to afford complete relief. The court recognized and declared Respondents' interest as joint venturers and the beneficiaries of a negative reciprocal easement. To assure completion of the subdivision in a manner that could be monitored by the Court, it provided for a receiver to take possession of the property of the joint venturers and complete its development.

In order to fully protect the interests of all concerned, the Court deemed it proper to dissolve the ecclesiastical corporation as a part of the relief to be granted. The evidence showed an intent on the part of Petitioners YOUNG and JANE JONES to take not only Respondents' property but also the general property and funds of the ecclesiastical corporation to Canada. There, it would be contributed to or used for the benefit of an established commune unrelated to the corporation or its members. The interests of any persons who might

claim to be members of the ecclesiastical corporation might go unprotected if the Court allowed the YOUNG's and JONES to proceed with any property not directly affected by other parts of the Court's order.

In addition, the Court found that a major purpose of the corporation had been to act as the developer of the property, as well as to serve the pastoral needs of the few families who had formed or attached themselves to it. With the development in the hands of a neutral receiver and the officers and directors of the corporation on their way out of the country, the corporation was in no position to fulfill its purposes. By broadening the receivership to include the distribution of the corporation's rightful property, the interests of all concerned would be fully protected. Any members who came forward could perpetrate the use of this property in a new ecclesiastical corporation which they might voluntarily form, or take their respective shares and go their separate ways, as they might freely choose.

In taking these steps, the Court did not take sides in any religious dispute, or award church property according to any view of the religious beliefs of any person. It separated property rightfully belonging to persons who were not members, according to neutral principles of property law, from property of the church itself. It then preserved all church property for those who might claim to be members and rightfully entitled to it as such.

In all of this, no "faction" appeared before the Court as a result of any religious dispute, and no property was awarded to any faction on the basis of such dispute. The Court recognized that the withdrawal of the Respondents (except BURTON, who was never a member) from the church was motivated by a religious disagreement, as contrasted with an abandonment of the development venture which might adversely affect their property rights. Therefore, the agreement between

the parties was not a nullity, contrary to the affirmative defense of Petitioners. The withdrawal from the church was explained by the inability of the member-Respondents to adhere to the changing religious dictates of the Youngs, and did not amount to a failure of consideration. Respondents did not claim to be "right" in their religious position, and the Court did not decide the case based on any view of which side was right or wrong in its religious beliefs, or whether either side had adopted a religious doctrine that was contrary to the original compact of the members.

The withdrawal of the Respondents from the church did have an impact upon the joint venture, however, since it eliminated the element of control exercised by the homeowners through membership on the church's Board of Elders. The trial court was of the opinion that the Young's foresaw and intended this result. However, the court's finding is focused on the property law results of such action and is in no way dependent upon a resolution of whether the Young's had departed from or adhered to the "true" beliefs of the church. In every instance the Court based its decision upon neutral principles of law.

REASONS FOR DENYING THE WRIT

I.

INTRODUCTION

Petitioners seek to persuade this Court that this case involves important constitutional issues regarding the Free Exercise and Due Process Clauses of the First and Fourteenth Amendments of the United States Constitution. In fact, the right of religious freedom played no role in the instant case. The case involved real property, joint venture and issues of constructive trust. The Petitioners were fairly apprised of the

seriousness of Respondents' allegations, were given the opportunity to defend through a full scale trial on the merits and are deemed to be aware of the broad legal and equitable powers of a trial court to afford complete relief.

The trial court's decision is well supported by statutory and case law. The Michigan Court of Appeals affirmed the trial court's judgment citing further case law in support thereof or finding issues raised on appeal by Petitioner to be completely without merit.

Simply stated, there are no important questions of federal law to be decided, and, in particular, there are no questions of such substance as to require the attention of this Honorable Court.

II.

PETITIONERS' RIGHT TO DUE PROCESS OF LAW WAS NOT VIOLATED IN THE INSTANT CASE BECAUSE NEITHER THE COMPLAINT NOR THE TRIAL COURT'S INSTRUCTIONS PROHIBITED THE TRIAL COURT FROM FASHIONING SUCH EQUITABLE REMEDIES AS IT DEEMED WARRANTED BY THE CIRCUMSTANCES

A Complaint must contain a statement of facts without repetition upon which the pleader relies in stating his cause of action.[5] Respondents' Complaint clearly and completely stated the facts relied on, specifically identified the theories of recovery and requested certain forms of legal and equitable relief, as well as: "such other and further remedies and relief,

[5] Michigan General Court Rules (hereinafter "GCR") 1963, 111.1.

legal and equitable relief as this court may deem proper in the circumstances. . . "[6]

Though much talked about in the Petition for Certiorari, the trial court's statement binding the parties to the facts and relief requested in the Complaint states nothing more than the obvious. Respondents' Complaint contained all facts that were ultimately proven as well as a general prayer for equitable relief. The trial court clearly did not intend in advance, to limit its own power to fashion such remedy as it might deem proper at the conclusion of the trial and in view of the proven circumstances.

It was unnecessary for Respondents to specifically identify "fraud" as a theory of recovery in order to put Petitioners on notice. Their actions as specified in the Complaint would inherently result in fraud upon the homeowners in the subdivision if subversion of the property were not prevented. *Georges v. Ballard*, 20 Mich App 554, 557 (1969). The commission of "any fraud or deception" as well as the misuse of its franchise and privileges and any misapplication of funds or property, are also grounds for a receivership and equitable distribution of the property of an ecclesiastical corporation. MCLA §450.180

Petitioners mislead this Court by inferring that the trial court found Petitioners guilty of fraudulent inducement when such an allegation was not contained in Respondents' Complaint. Petitioners are correct in stating that Respondents did not allege fraudulent inducement nor did Respondents desire to make this an allegation. Respondents, however, alleged facts that if proven would constitute constructive fraud on the part of Petitioners. These facts were proven at trial and the trial court properly found the existence of constructive fraud

[6] Cohoon Complaint, Paragraph (e), Appendix to Petition for Certiorari at App. 10k.

and not fraudulent inducement as Petitioners would lead this Court to believe.

In *Union Guardian Trust Co. v. Emery*, 292 Mich 394, 404 (1940) the Michigan Supreme Court defined constructive fraud:

> Constructive fraud has been defined as a term applied to a great variety of transactions which equity regards as wrongful, to which it attaches the same or similar effects as those that follow from actual fraud, and for which it gives the same or similar relief as that granted in case of actual fraud.... Constructive fraud has been evolved to designate what is, in essence, nothing more than receipt and retention of unmerited benefits.

The evidence at trial clearly showed that at some point Petitioners formed the intention to act contrary to the original agreements with regard to the subdivision property. The trial court found the Petitioners to have perpetrated a constructive or resulting fraud by breach of their trust and other fiduciary duties as joint venturers when it stated:

> That the conduct of the Defendant officers of the Corporation as outlined constitutes a fraud and a breach of trust on the rights of the Plaintiffs and justifies a court of equity on the Complaint of the Plaintiffs to compel restitution of funds improperly taken; ...[7]

Thus, the trial court properly found the existence of constructive fraud, in accordance with facts alleged and proven, and granted equitable relief to Respondents as requested in their Complaint.

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[7] Circuit Court Opinion, App. 6a.

III.

THE TRIAL COURT DID NOT EXCEED ITS AUTHORITY OR VIOLATE THE PETITIONERS' RIGHTS UNDER THE FIRST AND FOURTEENTH AMENDMENTS WHEN IT APPOINTED A RECEIVER AND DISSOLVED THE ECCLESIASTICAL CORPORATION

To the extent that an ecclesiastical corporation is involved in the instant case, Petitioners attempt to seek shelter in the protections afforded by the First Amendment. However, as noted by the court, there were many reasons to doubt that the ecclesiastical corporation involved in the instant case was a bona fide and continuing church organization. Although the corporation was a registered legal entity in good standing with the State of Michigan, the trial court determined that in reality it was "a financial arrangement used by the individual defendants as a subterfuge and fraud on the people of the state and the plaintiffs."[8]

Essentially the only members of the so-called church were Petitioners ROBERT C. and PATRICIA R. YOUNG, possibly their children, and JANE JONES. The trial court found that they intended to subvert Respondents' time, energy, money and property to their own use and "they used as a cover for their unlawful and immoral actions the subterfuge or fiction of an ecclesiastical corporation."[9] The instant action was instituted when these same individuals were caught in the act of preparing to abscond with Respondents' property and leaving the country. Certainly the First Amendment protection afforded the free exercise of religion was not intended to extend to and assist persons engaged in a scheme to defraud persons transacting business with an ecclesiastical corporation, or its own members.

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[8] Circuit Court Opinion, App. 4a.

[9] Circuit Court Opinion, App. 5a.

Assuming *arguendo* that the Petitioners' activities are entitled to First Amendment protection, notwithstanding the taint of fraud and impropriety that is present in the instant case, the trial court did not violate the dictates of the First Amendment.

The State of Michigan has a legitimate interest in resolving property disputes involving a church's claim of title, and a civil court is a proper forum for such a resolution. *Presbyterian Church In The United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969). Furthermore, civil courts do not inhibit the free exercise of religion merely by opening their doors to disputes involving church property. *Id.* This court has held that in resolving church property disputes a court must apply neutral principles of law. *Jones v. Wolf*, 443 U.S. 595 (1979).

In the instant case the trial court expressly acknowledged the Constitutional barrier against civil court interference in the internal affairs of a church,[10] while questioning its applicability under the circumstances presented. The court then proceeded to decide the parties' dispute strictly upon the neutral principles of joint venture, negative reciprocal easement and corporate law. No ecclesiastical questions of church doctrine were decided. (Although the Petitioners assert that the trial court resolved questions of church doctrine, no specific example is provided in the Petition for Certiorari.)

The trial court never attempted to decide the merits or the propriety of the Respondents' religious reasons for their separation from Petitioners. The trial court simply recognized that the parties stopped associating with each other, under circumstances that did not defeat Respondents' property rights.[11] Based on an analysis of the testimony, the Restriction Agreement, the subdivision "Concept" document, deeds and other evidence, the trial court resolved the parties' dispute

[10] Circuit Court Opinion, App. 4a.

[11] Circuit Court Opinion, App. 3a.

regarding the real property by applying neutral principles of law.

At page 20 of the Petition for Certiorari the Petitioners suggest certain "neutral principles" that the trial court could have employed, namely: consideration of title to the subdivision, Respondents' withdrawal from the FELLOWSHIP OF CHRIST, and the decisions of the governing body of the ecclesiastical corporation. These are *facts* and not neutral *principles of law*. Contrary to Petitioners' assertion, they were considered by the trial court. The court recognized that: (1) the ecclesiastical corporation held *legal* title to the subdivision,[12] (2) Respondents' separation was contrived by Petitioners in an attempt "to assume control over the land and money held by the church in separate book accounts,"[13] and (3) as a direct result of the fraudulent activity of the Petitioners and the attendant withdrawal by Respondents, Petitioners were left in complete control of the ecclesiastical corporation.[14] That is, Petitioners constituted the governing body of the corporation through the usurpation of control that was once shared mutually by all parties. Having considered these facts, together with other evidence, the trial court rendered a decision based on neutral principles of law.

The fact that the developer of the subdivision in question was also an ecclesiastical corporation does not insulate the corporation from liability on its legal contracts, or deprive those with which it deals of the right to assert the property rights created by such contracts. When a church takes title to property in trust for others and not for its own benefit, neutral principles of law are operative to enforce the trust.

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[12] Circuit Court Opinion, App. 3a.

[13] Circuit Court Opinion, App. 3a.

[14] Circuit Court Opinion, App. 3a.

In the instant case, the role of the FELLOWSHIP OF CHRIST was to act only as "developer" or "sponsor" of the subdivision project, and not to make a profit from the venture. The agreements and intentions of the parties were expressed in writing by Petitioner ROBERT C. YOUNG himself. As the instigator of the project and the drafter of the Concept document and the Restriction Agreement, through which the project was put into effect, he and the ecclesiastical corporation for which he also acted are estopped from denying the clear meaning of the words he used.

In the first place, Petitioner YOUNG himself used the word "sponsor" in describing the role of the church, in the original meetings of the four families, in the Concept document and later in explanations to the congregation:

> The *sponsor* of Heartpeace Hills is the Fellowship of Christ, a community church located at 71 Livernois, Rochester, Michigan.[15] (emphasis supplied)

The term "sponsor" is defined as:

> A surety; one who makes a promise or gives security for another, particularly a god-father in baptism.
>
> In the civil law, one who intervenes for another voluntarily and without being requested.[16]

There is in this definition no connotation, let alone a denotation, of any beneficial interest in any subject matter with which the sponsor might happen to deal. A sponsor simply acts for someone else. An attorney drafting these docu-

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[15] See Concept for Heartpeace Hills at App. 13k of Appendix to the Petition for Certiorari.

[16] Black's Law Dictionary, 4th ed, p. 1574.

ments might have used the term "nominee," for that is the legal capacity in which the sponsor in the instant case is acting. The ecclesiastical corporation signed the land contract and certain contracts for construction that could not conveniently be done by the individual families. But it did so as sponsor for the families who intended to become residents and who would actually purchase lots. It did not do so for its own benefit of profit, as was established in the uncontradicted testimony of Respondent STAUGAARD.[17]

In contrast to the position and intention of the ecclesiastical corporation, the individual families definitely intended to benefit and profit by the project, by being able to enjoy their homesites, the common areas and the community as a whole, and to eventually realize a monetary gain when they sold their homes and the privileges and easements appurtenant to them as set forth in the Concept, Sec. II.[18]

The position of the resident families is clearly indicated in the Concept document.[19] Section I states the need for "expressing community in better forms." Section II defines the community as consisting of "two micro-neighborhoods," each located on a cul-de-sac and containing 11 homesites, the "spirit" of which is "strengthened by the sharing of certain desirable facilities, such as a tennis court, swimming pool, playground equipment, a small stream, park, and the meeting place for the Church." *All* of these, including the church's meeting place, are thus dedicated to the community and its residents. It should therefore be no surprise to anyone who read this or to whom it was read that the residents would claim that these properties are held in trust for their use.

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[17] See trial transcript. (Book 2, p. 15)

[18] See Concept for Heartpeace Hills at App. 12k of Appendix to the Petition for Certiorari.

[19] Id.

The playground and meeting place are in existence in the 3.27 acre common area, and the rest are yet to be constructed. The record demonstrates that they were intended for the "outlot" area between the two micro-neighborhoods. That the entire land area was intended to be a single subdivision under this plan is expressly stated in Section II of the Concept: "We propose an overall plan for establishing and maintaining a residential community of the highest order."

That the church was merely a sponsor and not a part of the community per se, is also indicated in Section V of the Concept where it states: "The Heartpeace Hills community is a fellowship of *individual families . . .* " (Emphasis added) The "Homeowners" adopting the Concept and buying a lot in the subdivision are bound by an express agreement in Section VII that they "shall build their home and maintain their property in accordance with the Restrictive Agreement adopted by the Advisory Board and ratified by the Fellowship of Christ."

Petitioners' arguments regarding the propriety of the trial court's dissolution of the ecclesiastical corporation and appointment of a receiver deserve little attention. The facts alleged in Respondents' Complaint put the Petitioners on notice that, if proven, Petitioners would be found to have perpetrated a constructive fraud. According to Michigan law, the commission of any fraud, deception, breach of trust or misapplication of corporate assets by a corporation or its officers, are grounds for dissolution and appointment of a receiver. MCLA §450.180. *Edison v. Fleckenstein Pump Co.*, 249 Mich 234 (1930); *Stamm v. Northwestern Mutual Benefit Association*, 65 Mich 317 (1887).

The trial court did not exceed its jurisdiction when it dissolved the ecclesiastical corporation and appointed a receiver. Respondents' Complaint included a request for specific forms of relief together with a general prayer for such

equitable relief as the trial court deemed proper under the proven circumstances. Respondents did not specifically pray for the dissolution of the ecclesiastical corporation or the appointment of a receiver. However, it is a well established tenet in Michigan and federal law that a trial court must grant the relief to which a party is entitled, whether or not he has specifically requested it. F.R.C.P. 54(c); *Carlson v. Williams*, 348 Mich 165 (1957); and GCR 1963, 518.3 which provides in part "... every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings".

Charged with knowledge of Michigan law and having received actual notice of the facts alleged in Respondents' Complaint, Petitioners received adequate notice that dissolution of the ecclesiastical corporation and appointment of a receiver were forms of relief within the equitable jurisdiction of the trial court in the instant case. A full scale trial was held in which Petitioners were given an opportunity to defend Respondents' allegations. Petitioners' constitutional rights were not violated by the equitable relief granted by the trial court.

Petitioners' contention that Michigan courts are without jurisdiction to dissolve an ecclesiastical corporation, in the absence of *quo warranto* proceedings by the Michigan Attorney General, is equally without merit as exemplified by the Michigan Supreme Court's denial of the Attorney General's Motion for Reconsideration.[20] The Constitution does not restrict a party to any particular form of procedure, or point out a mandatory choice of process when legally recognized alternatives are available. Once the statutory grounds for action appeared in the evidence, Petitioners had no constitutional right to demand that *quo warranto* proceedings be used

[20] See Order of the Michigan Supreme Court, dated May 27, 1981, App. 1b

rather than the general powers of the court, since it would be the court that would make findings of fact and determine the relief in either case. The Petitioners have no constitutional right to have the corporation dissolved by action intitiated by the state Attorney General rather than by the court itself. The matter is strictly one of state law.

MCLA 450.180 does authorize the Michigan Attorney General to initiate *quo warranto* proceedings for the purpose of petitioning a court for the receivership of an ecclesiastical corporation. However, the involuntary receivership of an ecclesiastical corporation is not the exclusive domain of the Attorney General. The instant action was not based upon the *quo warranto* statutes nor was *quo warranto* relief requested by Respondents. While the Attorney General is authorized by statute to initiate a petition for dissolution, the legislature has not deprived the judiciary of its general powers in equity to grant complete relief in complex matters brought before it. This is implicit in the decision of the Michigan Court of Appeals and is undisturbed by the orders of the Michigan Supreme Court.

In view of the court's findings of constructive fraud, breach of trust and misapplication of corporate assets, and the imposition of a receivership, it was well within the equitable jurisdiction of the trial court to dissolve the ecclesiastical corporation. While MCLA 450.180 does not specifically refer to dissolution of the entity, the complete distribution or escheat of its property, together with the court's finding of no continuing intent or ability to fulfill its corporate purposes,[21] justifies the dissolution under the general authority of MCLA 450.178, which states: "Every such corporation shall be a non-profit corporation and subject to the provisions of this act relating to non-profit corporations generally except as specifically otherwise provided."

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[21] Circuit Court Opinion, App. 6a.

The provisions of the same General Corporation Act addressing non-profit corporations[22] incorporate the provisions of the Act dealing with corporations generally. In these provisions, at MCLA 450.65, the matter of dissolution is specifically addressed, and states in pertinent part:

> "... any corporation, whose assets had been wholly disposed of under court order in receivership or bankruptcy proceedings may be summarily dissolved by order of the court having jurisdiction over such proceedings; ...."

In addition, based upon the applicability of general corporate law to ecclesiastical corporations, in absence of specific statutory provision to the contrary, the trial court was correct in its holding that under Michigan law the corporation can be dissolved when its corporate purposes cannot be attained.[23] *Holden v. Lashley-Cox Land Company*, 316 Mich 478 (1947).

IV

THE TRIAL COURT PROPERLY FOUND THAT THE STATUTE OF FRAUDS WAS INAPPLICABLE AND IT DID NOT ERR WHEN IT FOUND IN SUBSTANCE THAT A JOINT VENTURE EXISTED

A. The Statute of Frauds is Inapplicable.

The trial court, as well as the Michigan Court of Appeals, properly held that the Statute of Frauds was inapplicable in the instant case. Respondents direct this Court's attention to

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[22] MCLA 450.117

[23] Circuit Court Opinion, App. 6a.

the Opinion of the Michigan Court of Appeals,[24] in which the appellate court cites several Michigan cases which demonstrate that the part performance doctrine removes an oral contract from the operation of the statute of frauds and that reciprocal easements arising by operation of law need not be in writing.

B. Respondents Established the Existence of a Joint Venture by a Preponderance of the Evidence

In *Hathaway v. Porter Royalty Pool Inc.*, 296 Mich 90 (1941), the Michigan Supreme Court defined a "joint venture" as follows:

> The courts have not laid down an exact definition of what constitutes a joint adventure nor is it possible to enunciate a general rule by means of which the question as to what amounts to a joint adventure can be answered, because such an answer depends largely on the terms of the particular agreement in controversy, upon the construction which the parties have given it, upon the nature of the undertaking, as well as upon other facts.
>
> It can be said that a joint adventure contemplates an enterprise jointly undertaken; that it is an association of such joint undertakers to carry out a single project for profit; that the profits are to be shared, as well as the losses, though the liability of a joint adventurer for a proportionate part of the losses or expenditures of the joint enterprise may be affected by

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[24] Opinion of the Michigan Court of Appeals, dated January 28, 1980, App. 1d of the Appendix to Petition for Writ of Certiorari.

> the terms of the contract . . . There must be a contribution by the parties to a common undertaking to constitute a joint adventure. . . . and a community of interest as well as some control over the subject matter or property right of contract. . . . *Id.* at 102-03. (citations omitted)

As to the method of determining the relationship, the *Hathaway* Court said:

> Whether the parties to a particular contract have thereby created, as between themselves, the relation of joint adventurers or some other relation depends upon their actual intention, and such relationship arises only when they intend to associate themselves as such. This intention is to be determined in accordance with the ordinary rules governing the interpretation and construction of contracts . . . *Id.* at 103. (citations omitted)

The main elements of the parties' joint venture relationship in the instant case, the manner in which they have been pleaded and proved and citations of law in support are as follows:

(1) *An Enterprise Jointly Undertaken.*[25] It was proven that the Respondents and Petitioners ROBERT C. and PATRICIA R. YOUNG, "joined together in mutual applications of money, thought, time and effort and construction materials in a common effort to build a subdivision complete with roads, parks, swimming pool, recreational areas and buildings as well as a church structure".[26]

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[25] Cohoon Complaint, Paragraphs 4, 5 and 7, Appendix to Petition for Certiorari at App. 3k and 4k.

[26] Circuit Court opinion, App. 3a.

(2) *The Carrying Out of a Single Project for Profit.* [27] An expected beneficial result is all that is required and not necessarily an intention to earn a "profit" as the word is used in the common business sense. 46 Am Jur 2d, *Joint Ventures,* §7, p. 28. The fact that religious reasons formed a part of the parties' motivation in entering into the joint venture does not detract from Respondents' expectation of realizing a beneficial result, financially or otherwise.

At trial, Respondents proved that the profit expected was: (a) the creation of a beautiful community complete with amenities to be constructed upon the common areas and to be shared equally by individual resident families; and (b) the inherent possibility of realizing a financial gain upon sale of lots (and homes) acquired by them in the course of the venture due to the value added to the enterprise.

(3) *The Sharing of Profits and Losses.*[28] As stated above, the immediate benefits and any ultimate financial gains were to be shared and equally available to all. Losses were also to be shared because of the commitment and actual practice of each of the venturers to support the venture to the best of his or her ability. In accordance with Michigan case law, no more is required to establish the relationship. *See e.g. Summers v. Hoffman*, 341 Mich 686 (1955) and *Hathaway*, *supra*, where the Michigan Supreme Court stated:

> The expenses of the management of the pool were to be paid out of the proceeds received for the oil before the proportionate 'dividends' were paid to pool members. There were no losses to be paid by the

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[27] Cohoon Complaint, Paragraphs 3 and 9. Appendix to petition for Certiorari at App. 2k and 5k.

[28] Cohoon Complaint, Paragraphs 4, 6 and 7. Appendix to Petition for Certiorari at App. 3k and 4k.

> members due to the fact that, because of the inherent nature of the enterprise, no losses could result. 296 Mich 90, 104.

In the instant case, all expenses of acquisition and development were to be paid for in full by the sale of lots. In practice, this was done by the parties under the arrangement, although there are some lots yet to be sold.

(4) *Contribution to a Common Undertaking.*[29] Each of the parties to the venture contributed money, labor and skills to the project to the best of his or her ability and as the needs arose.

(5) *Community of Interest and Common Control Over the Subject Matter or Property Right.*[30] The parties had a community of interest in that they expected to share mutually in the benefits from the venture and depended upon each other to support the project to the best of his or her ability in labor, skills and funds. Control was effectuated by the use of an existing ecclesiastical corporation, the FELLOWSHIP OF CHRIST. This provided a convenient executive body in which the venturers were all either officers or could expect to have a voice according to the by-laws adopted.

In Michigan, corporations have often been utilized as a means of effectuating a joint venture. *See e.g. Hathaway, supra.* The corporation's Advisory Board and officers owed a duty to themselves and the other venturers to carry out the trust placed in the corporation. The fact that the corporation was in existence prior to the commencement of the joint venture is unimportant. *Latimer v. Piper,* 261 Mich 123 (1933).

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[29] Cohoon Complaint, Paragraphs 5 and 7. Appendix to Petition for Certiorari at App. 3k and 4k.

[30] Cohoon Complaint, Paragraphs 3, 4, 5 and 8. Appendix to Petition for Certiorari at App. 2k, 3k and 4k.

(6) *Breach or Threatened Breach of Agreement, Trust and Fiduciary Duties:*[31]

"The law requires that the highest degree of integrity, full disclosure and fairness be maintained among coadventurers". *Latimer v. Piper*, 261 Mich 123, 134 (1933).

In the instant case, the Petitioners have, among other things, (a) forced the other joint venturers out of effective control, (b) discontinued the development of the residential community leaving it in a partially completed state, (c) sought to destroy the common areas reserved for the joint use of the church and individual lot owners and exclude the other joint venturers from mutual enjoyment thereof, (d) have attempted to sell the common areas for uses not contemplated, (e) stated their intent to leave the country with the proceeds of all common areas and lots which are still in the name of the ecclesiastical corporation.

The foregoing demonstrates that the elements of a joint venture were pleaded and proven by Respondents. The findings of the trial judge, who had the advantage of seeing and hearing the witnesses, are in accord.

At trial, Petitioners chose not to be sworn, testify or offer any refutation of the testimony of the Respondents. Their primary defense was based upon cross-examination of the witness regarding their understanding of the legal concepts and conclusions involved. Even at this point in the proceedings, Petitioners attempt to isolate and remove from context portions of testimony of Respondents' lay witnesses which contain their conclusions regarding the legal concept of "joint venture". These questions are properly determined only by

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[31] Cohoon Complaint, Paragraphs 10 and 11. Appendix to Petition for Certiorari at App. 5k-8k.

the actions and statements of the parties when the joint venture was conceived and by their performance under it. They are also answered to a great extent by the intrinsic nature of the project that the venture was formed to accomplish.

At the completion of trial and after considering the totality of the testimony and documentary evidence, the trial court understood the difficulty of Respondents' witnesses in dealing with such conclusionary questions and found in Respondents favor based upon the objective facts that were proven and undisputed at the trial, and in many instances were admitted by stipulation of Petitioners' counsel.

V.

CONCLUSION AND RELIEF REQUESTED

This Court should not be mislead by Petitioners' attempt to persuade it that a violation of constitutional rights has occurred in the instant action. In view of Petitioners' fraudulent conduct and their breach of trust and fiduciary duties to Respondents, the trial court properly exercised its discretion in fashioning equitable relief in accordance with the pleaded and proven circumstances. The dissolution of an ecclesiastical corporation in the exercise of the equitable jurisdiction of a trial court does not automatically invoke the protections of the First Amendment to those affected by the dissolution. Particularly when those same persons have been found to have perpetrated a fraud and to have used the ecclesiastical corporation as a subterfuge to camouflage their fraudulent activity.

For the foregoing reasons, the Respondents respectfully request that this Honorable Court deny the Petition for a Writ of Certiorari.

Respectfully submitted,
COOK & PRINGLE, P.C.

By: JOHN A. COOK

and: ALEXANDER J. LELLI, JR.
1500 N. Woodward Ave., Ste. 230
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Dated: June 30, 1981

APPENDICES A AND B

APPENDIX A

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR
THE COUNTY OF OAKLAND

ROBERT BOGRETTE, et al,
Plaintiffs

-vs- No. 77-152370 AZ

ROBERT C. YOUNG and PATRICIA R. YOUNG, his wife, and JANEY JONES, and FELLOWSHIP OF CHRIST CHURCH, an Ecclesiastical Corporation,
Defendants

The Opinion of the Court in the above cause before the Honorable James S. Thorburn, Circuit Judge, at Pontiac, Michigan on May 16, 1978.

APPEARANCES:

JOHN A. COOK,
Appearing on behalf of the Plaintiffs

ANDREW J. BRODER
Appearing on behalf of the Defendants

Pontiac, Michigan
May 16, 1978

* * *

JOHN A. COOK: The plaintiffs are ready, your Honor.

ANDREW J. BRODER: Ready, your Honor.

THE COURT: The plaintiffs in this cause advance theories of joint venture, constructive trust, negative reciprocal easement and general plan, coupled with a prayer for an accounting.

The defendants deny the existence of a joint venture and any resulting constructive trust and, therefore, the need for an accounting as well as the creation of any negative reciprocal easements or the existence of any general plan outside the recorded covenants running with the land, asserting the statutes of fraud and limitations and the parole evidence rule as devices to avoid the consideration of oral testimony.

The undisputed facts are that the principal plaintiffs and defendants Robert C. Young and Patricia R. Young were a group of people including some of the plaintiffs whose common interest was a particular Christian belief, and a gathering together to live their lives on the 22 acres of land in litigation. They agreed to live by and be bound by "Christian principles". I might add there was an awful lot of religion in this case but very little Christianity.

In consideration of a price paid each married couple was to have conveyed to them in fee simple a residential lot upon which they would build a house which they would own. They were to worship in common under the spiritual guidance of the defendant, Robert C. Young, in a church building to be located on the 22 acres. They were to share tennis courts, a swimming pool and recreational and park facilities as a part of the 22 acres, and the lives of all were to be bound together religiously, socially and property-wise with the thought in common that "Christian principles" would be the constant determining factor in their lives. It was agreed that they would form an Ecclesiastical Corporation to be known as the

Fellowship of Christ, a now defendant, that would hold legal title to the 22 acres.

This Court is of the opinion that until the time of the disagreement which came about between the defendants and the plaintiffs no one discussed such esoteric questions as property rights, but to the contrary, joined together in mutual applications of money, thought, time and effort and construction materials in a common effort to build a subdivision complete with roads, parks, swimming pool, recreational areas and buildings as well as a church structure.

All members of the governing board of the defendant church up until the plaintiffs and the Youngs separated were, with the exception of the defendant Robert C. Young, plaintiffs.

The lots in the subdivision were to be sold to individual Christians of spiritual convictions similar to their own, and all would join together in creating a "Garden of Eden". All went well and according to plan for a period of time until Satan entered the Garden. For reasons that are material to this mundane litigation the individual plaintiffs and defendants stopped associating with each other.

The Court is of the opinion that the defendants Young brought about the separation in order to assume control over the land and money held by the church in separate book accounts. The lack of activity by the plaintiffs in the spiritual aspect left the defendant Youngs in complete control of the corporate defendants.

As an interesting aside, although the Youngs were present throughout the proceedings they did not take the stand in the presence of the Court and the Court did not have the opportunity to examine their candor and demeanor. The Court had to rely upon the deposition of Robert Young, which was introduced into evidence. I might indicate that a careful reading of that deposition leads one to the only conclusion that the

testimony of Robert Young was incredible. It was inconsistent. It was unresponsive. It was not truthful.

The by-laws of the corporate defendant, according to the testimony of the pastor, defendant Robert C. Young, provided that the pastor would select the Advisory Board consisting of, as it did, four people, although the written by-laws provided it could have had 12. This Advisory Board would manage the affairs of the church, i.e., the corporate defendant.

At the time of the taking of the deposition of the defendant Young the corporate defendant seemed to consist of the pastor, his wife and their family, and one Janey Jones. It was a church without a congregation. The house that the Youngs lived in was the house that had originally been used from the time of incorporation for church purposes or a meeting of the congregation when the plaintiffs were still associating with the individual defendants. So in point of fact the corporate asset, i.e., the church, was being used in abrogation of the church purpose by the defendant Youngs as their home where they lived together with their children.

There are rules of law which prohibit the Concept under which all the parties originally agreed to be bound. The restriction of the sale of lots to persons because of race, creed or color, as was done in this case, is prohibited by the Constitution of the United States. The Constitution of the United States further provides for separation of church and state. There is no doubt that a Court cannot interfere in the internal affairs of a church because of this constitutional barrier. However, a careful study of the record in this case can only lead to the conclusion, and this Court reaches this conclusion, that the so-called ecclesiastical corporation is not a church. If it ever was one it is no longer and has not been for many, many years, and has not been in a position to attain its corporate purpose. As a matter of fact, it is not a church but a financial arrangement used by the individual defendants as a subterfuge and fraud on the people of the state and the plaintiffs.

A careful reading of all of the documents introduced into evidence and the testimony of the plaintiffs, and in particular a careful reading of the deposition of the defendant Robert C. Young, leads the Court to the conclusion that the defendant Robert C. Young and his wife intended to subvert gifts of time, energy, money and property to their own use. That they used as a cover for their unlawful and immoral actions the subterfuge or fiction of an ecclesiastical corporation.

Again, the testimony of the defendant Robert C. Young, represented by his deposition only, is incredible.

Throughout the life of the corporate defendant the individual defendants Robert C. Young and Patricia R. Young used the corporate assets as their own, even conveying their own home to the church.

This Court finds as a matter of fact there was a general plan for the development of the 22 acres as a residential subdivision. That in addition to the covenants running to the land which were reduced to writing, the whole area which bisected the two subdivisions recorded as Heartpeace Hills and Heartpeace Hills No. 2, designated as an "Outlot" on the Buckerfield Exhibit 33 introduced into evidence, and the portion designated "Exception for Church", also unplatted, were to be used in common for recreational purposes by all of the lot owners who were part of this development, plan or scheme.

The statute of frauds and the statute of limitations are inapplicable. First, because a general plan or negative reciprocal easements are exceptions to and avoid the statute of frauds. Although it could be argued the statute of limitations would limit any claim against the corporate entity this Court is convinced that long before the statute tolled the individual defendants Robert C. Young and Patricia R. Young completely frustrated the corporate purpose and were using the assets of the corporation as their own without benefit of dissolution of the corporation. It had in point of fact ceased to be a church, if it ever was one.

The Court makes the following determinations and will sign an order in accordance with the following opinion. And I might refer counsel to the law of the State of Michigan which provides for the dissolution of corporations to protect minority stockholders. It certainly is applicable in the instant case, in such cases where the corporate purpose cannot be obtained. That is the case of *Holden v. Lashley-Cox Land Company*, 316 Mich 478.

The corporate defendant has been and now is being operated for the sole benefit of the individual defendants to the detriment of the plaintiffs, and does not have as its corporate purpose spiritual goals but is in fact set up for the purpose of developing a residential subdivision.

The corporation is therefore dissolved. As a matter of fact, the corporate purpose cannot be attained and was never intended to be attained by the defendants Young.

That the conduct of the defendant officers of the corporation as outlined constitutes a fraud and a breach of trust on the rights of the plaintiffs and justifies a court of equity on the complaint of the plaintiffs to compel restitution of funds improperly taken; to appoint a receiver and to order dissolution of the corporation, because over a period of years the property rights of the plaintiffs have been subverted.

Pursuant to agreement, or rather, not in pursuance of the agreement the subdivision has not been developed.

A judgment shall enter which provides for the imposition of the written covenants introduced into evidence to be affixed to each and every residentially platted lot in the subdivision.

The receiver shall take possession of the corporate assets of the corporate defendant, and in particular assume possession of all of the land which lies between the two subdivisons, Heartpeace Hills and Heartpeace Hills No. 2, as well as the land described in the Buckerfield exhibit as "Exception for

Church". The receiver shall sell and dispose of all of the residential lots in the two subdivisons yet unsold.

The land remaining between Heartpeace Hills subdivisions and Heartpeace Hills subdivision No. 2 and the 3.24 acres described as "Exception for Church" shall be subject to uses for part purposes of the lot owners in the two platted subdivisions, and shall be bound by identical covenants running with the land which carry out these purposes.

The receiver shall pursuant to law use the proceeds of the sale of the residential lots to carry out the original purpose of the defendants Young and the plaintiffs in providing recreational facilities to the extent possible on the two common areas described, including tennis courts and a swimming pool.

The receivership obviously should be subject to any lawful claims that would exist against the corporation in being, including any claims that rightfully should be present when confronted by dissolution of a corporation. The Court has in mind as one item the proceeds of the sale of the defendants Youngs' home. Although they do not have clean hands this is a court of equity. The Court is of the opinion that there should be appropriate allocation made so that ultimately the receiver in carrying out the instructions of the Court should make a determination, or present to the Court for determination an allocation as to what the claim of the Youngs would consist of and the extent to which it should be allowed, contrasted with the funds that are left that are needed to provide for the recreational facilities above described.

This judgment is based upon the facts and the situation as of May 16, 1978, the Court having viewed the premises carefully with both counsel.

The Court shall retain jurisdiction. A receiver will be named by the Court at the time the judgment is presented for signing.

The Court will sign an order to that effect.

* * *

APPENDIX B

ORDER OF MICHIGAN SUPREME COURT

(Entered May 27, 1981)

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court Room in the City of Lansing, on the 27th day of May in the year of our Lord one thousand nine hundred and eighty one.

Present the Honorable
MARY S. COLEMAN,
Chief Justice,

CR 29-421b
(29-421c)
(29-421d)
(29-421e)

THOMAS GILES KAVANAGH,
G. MENNEN WILLIAMS,
CHARLES L. LEVIN,
JOHN W. FITZGERALD,
JAMES L. RYAN,
BLAIR MOODY, JR.,
Associate Justices

ROBERT and JUDITH BOGRETTE, et al,
Plaintiffs-Appellees,

v

SC: 64990
COA: 78-5213
LC: 77-152370-AZ

ROBERT C. YOUNG and PATRICIA R. YOUNG, JANE JONES and FELLOWSHIP OF CHRIST CHURCH, an Ecclesiastical corporation,
Defendants-Appellants,

and

DAVID and DEBORAH EVANS,
Defendants-Appellees.

On order of the Court, the motion for immediate consideration and the Attorney General's motion to intervene for the purpose of filing a brief in support of reconsideration are considered, and they are GRANTED. The motion for reconsideration of this Court's order of December 3, 1980, is DENIED because it does not appear to the Court that the order was entered erroneously.

The motion for stay is DENIED as moot.

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STATE OF MICHIGAN — ss.

I, Harold Hoag, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 27th day of May in the year of our Lord one thousand nine hundred and eighty one.

(Seal)

/s/ Corbin R. Davis
Deputy Clerk